

Annex to December 2015 PC Meeting response from solicitor

Date of email 19th November 2015

Subject header: Legal Advice - The Parish Hall at West Worldham

Dear Robin,

Further to your instructions and our subsequent telephone conversation, I have now had the opportunity to consider the points raised in your email of 28 October.

My views have been formed from the background information supplied by you; copies of the title deeds of HP541909 which has the right noted against it; a telephone conversation with Thomas Brock from the PCC; and looking at planning application reference 56175 on the EHDC planning website.

Dealing with your points in order I reply as follows:

Does the letter of Consent sent by Cllr Brock providing consent to the removal of the restricted conveyance have any legal validity and can it be withdrawn?

The letter purporting to disclaim the right by Thomas Brock on behalf of the Parish Council has no legal validity as he was not properly authorised by the Parish Council to make this disclaimer and it is not in a correct form. I understand that the disclaimer was submitted to the Land Registry earlier this year and was rejected. If the Parish Council do go ahead and formally disclaim the right it should be done by deed and executed by the Parish in accordance with its standing orders. As the letter is not valid legally there is no need to formally withdraw it.

In the circumstances what is the likely legal ownership of the current building?

I understand from information supplied by you and information from Thomas Brock that in around 1928 the local community raised some money and purchased an old hut from the army in nearby Bordon. Ralph Dutton then allowed the hut to be erected on part of his land. In 1963 the land was sold off and in the conveyance the existing right as set out below was reserved to the PC in the conveyance.

"subject to the right in perpetuity of Worldham Parish Council to maintain the Parish Hall on part of ordnance survey 28"

There is no earlier documentary evidence recording this right as all the title deeds to the property were destroyed in the Blitz and the solicitor preparing the conveyance simply included the reference to the existing right.

The Parish Council were totally unaware of this right and there is not any reference to the Parish Hall in any agendas or minutes of the PC. Mr Brock also confirmed that he has lived in the village all his life and was unaware of the right. The PC has never exercised the right and has never spent any money on the Parish Hall in respect of maintenance or utilities/insurance and has never used the facility except on two occasions during the last 20 years when its own Village Hall was not available.

As the PC has never exercised the right and the right was clearly granted many years ago (before 1963), I believe it would be invalid because, before 16 July 1964, for a right to be valid it must take effect within, what was known as the Perpetuity Period, which at that time was fixed at 21 years after the death of an identifiable person alive at the time the right was granted (usually a reigning monarch). This old law is very odd but basically as your right was not limited to take effect within the Perpetuity Period there is no right at all.

Accordingly, I would set out in the preamble to any disclaimer of the right 'in so far as the right is capable of being exercised by the PC, as it appears to be void under the old common law rule against perpetuities, the PC disclaims the right etc etc'.

As far as the PCC is concerned, notwithstanding the wording of the right, I believe that it has a better claim to legal ownership of the Parish Hall. From what you have told me and also Mr Brock, the PCC has used the building on 5/6 occasions each year including the annual church meeting and has always paid the electricity bills and insured the building and taken out public liability insurance for events. I further understand that, when part of the roof was blown off and damaged a neighbour's property the Church's insurance paid for the damage, although the repair work to the Parish Hall was carried out by Hartley Park Farm Limited.

All this points to the PCC being the legal owner of the building in so far as anyone has an interest in the building because a building attached to someone's land enures for the benefit of the landowner. I suppose it is possible that the reserved right should have said the PCC not PC. Mr Brock says that, within the village it was always understood that the building was owned by the community and that, the PCC as a statutory body took responsibility for it. As we have already noted no one was aware of the reserved right to the PC.

Does the Parish Council have any right or obligation to demolish a building deemed to be unsafe and not financially viable to be put into a safe condition taking into account the uncertainty over its ownership?

I don't believe that the PC has any right or obligation to demolish the building which is unsafe and not financially viable because it does not have any interest in the building. You have confirmed that the PC already has a Village Hall and there is no evidence of any need for a second facility given the current usage of that building.

Submitting the Disclaimer to the Land Registry and getting the C3 entry removed at the Land Registry should be dealt with as soon as possible. Incidentally, the right is also registered against title number HP403123 also owned by Hartley Park Farms Limited. This is clearly a mistake as the Parish Hall is situated on the land within title number HP541909. I will arrange for this entry to be removed as well.

Does the Parish Council have the right to waive its rights under its charge to maintain a village hall on the site?

It is always possible for a beneficiary of a right to disclaim it. As I have already said, I do have doubts that as the PC has never exercised the right it actually exists legally anyway. I should also clarify that the PC is not charged to maintain the Parish Hall. The right is set out in the Charges Register of Hartley Park Farms Limited's title and is a charge against its property and when the word 'maintain' is used it is in the sense of 'keep on the land' not an obligation to keep in repair.

If there is no village hall on the land, does the Parish Council have any rights to use the land for any other purposes?

As I doubt that the PC has any rights in respect of the Parish Hall it follows that I don't believe that the PC could claim any rights to use the land for any other purposes.

The PCC might be able to claim rights over the land if the Parish Hall is demolished because of its usage of the Parish Hall for a number of years - there is the possibility of it claiming an implied lease.

Mr Brock confirmed that the PCC do not want the Parish Hall either because of its condition. I understand from my discussion with Mr Brock that as a result of the recent planning application that there was a proposal for the Parish Hall to be demolished and compensation to be paid to the community which the PCC would use to upgrade other local community facilities. The attempt to disclaim the right by the PC was intended to facilitate the planning application. However, this application has now been withdrawn because EHDC has indicated that it will be refused, one of the grounds being, because the planning would result in the loss of a community asset contrary to one of its planning policies.

To conclude, I don't believe that the PC has any rights in respect of the Parish Hall and should go ahead and submit its disclaimer to the Land Registry to remove the entries regarding the right so that it takes itself out of the fray as far as the future of this building is concerned. You mentioned that EHDC were at one time considering serving a demolition notice on the PC in respect of the Parish Hall but it is interesting that one of the reasons for refusing the planning application was Village Hall Policy CP16 designed to protect social facilities. There will no doubt be further planning applications for this site so the future of this building is going to continue to be an issue.

You may wish to share my advice with the PCC but whether, or not, you do you should let them know that you intend to disclaim the right

I hope this deals with all your points your. Please call me to discuss if you have any further queries

Regards

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